

Appl. No. 10/624,005
Atty. Docket No. AA599
Amdt. dated June 16, 2006
Reply to Office Action of February 23, 2006
Customer No. 27752

REMARKS

Claim Status

Claims 1-8 and 10 are pending in the present application.

Applicants have amended claim 1 which now includes the feature of a shaped tab comprising a fastening material.

Applicants have cancelled claim 9.

Rejection Under 35 USC §103(a) Over Nease et al. (US 5580411)

Claims 1 has been rejected under 35 USC §103(a) as being unpatentable over Nease et al. (US 5,580,411).

Applicants submit that claim 1 has been amended to include the feature of a shaped tab comprising a fastening material.

Applicants remind the Office that claim 1 includes the features of shaped tab having a longitudinal centerline, a lateral centerline, a distal portion and a proximal portion, the shaped tab has a contour edge comprising a shaped upper edge and a shaped lower edge, the shaped upper edge and the shaped lower edge are symmetric with respect to the longitudinal centerline of the shaped tab when relatively shifted in the longitudinal direction and are asymmetric with respect to the lateral centerline of the fastening member.

Applicants respectfully remind the Office that “[t]o establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation ... to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure.” (Emphasis supplied) *In re Vaeck*, 947 F.2d 488, USPQ 2d 1438 (Fed Cir. 1991).

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Applicants respectfully submit that the Office Action fails to establish a *prima facie* case of obviousness because the '411 reference does not teach or even remotely suggest the shaped upper edge and the shaped lower edge of the shaped tab are symmetric with respect to the longitudinal centerline of the shaped tab when relatively shifted in the longitudinal direction and are asymmetric with respect to the lateral centerline of the fastening member nor does it teach or suggest that the shaped tab comprises a fastening material.

The Office action dated February 23, 2006, states that “[w]hile the particular exact measurements are not clearly shown, it would appear that the key asymmetry and symmetry are suggested by the fastening tab of Nease.” (Emphasis added)

Applicants respectfully submit that if as stated by the Office “the particular exact measurements are not clearly shown” by the '411 reference then the reference cannot have reasonably suggested or provided any suggestion to modify the reference.

The Office Action dated February 23, 2006, further states that “[a]ny slight change would appear to be obvious over the teaching of Nease.” Applicants remind that Office that obviousness cannot be predicated on what is unknown. In addition, the Office action does not indicate what would have been the motivation of one of ordinary skill in the art to modify the '411 reference to arrive at the claimed invention.

Applicants submit that since the Office Action did not indicate the motivation or suggestion for one of ordinary skill in the art to modify the '411 reference, the Office Action has been relying on impermissible hindsight reconstruction.

For the sake of brevity, Applicants submit that claims 2-8 and 10 depend directly or indirectly on claim 1 and that the Office has the burden to make a proper *prima facie* case of obviousness for claim 1 before it can allege that claims 2-8 and 10 are unpatentable under 35 U.S.C. § 103(a).

Reconsideration and withdrawal of the rejections are therefore respectfully requested.

Conclusion

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In view of the previous amendments and remarks, it is submitted that all the pending claims are in condition for allowance. Early and favorable action on all claims is therefore requested.

If the next action is other than to allow the claims, the undersigned representative is requesting the favor of a telephonic interview.

Respectfully submitted,

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